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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2009-002466
Application 09/993,930
Technology Center 2600

Decided: October 23, 2009

Before KENNETH W. HAIRSTON, CARLA M. KRIVAK,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1, 3 to 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 48, 50 to 60, and 62 to 71.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

Appellant's disclosed and claimed invention relates to a remote control system and method for moving an access door (e.g., garage door opener) (Abs.; Spec. 1:14-16). The system includes a controller, at least one uniquely coded remote transmitter, and an indicator for indicating whether a new uniquely coded remote transmitter has been learned (Abs.; claims 1, 13, 24, 29, and 34; Fig. 1). The system and method may also include indicating whether a new uniquely coded remote transmitter has been learned based upon the controller being switched to the door moving mode (claims 1 and 48).

Claims 1 and 13 are representative of the claimed invention, and read as follows:

1. A remote control system for moving an access door and comprising:

at least one indicator;

at least one uniquely coded remote transmitter; and

a controller being switchable to a learning mode for learning a unique code of a remote transmitter to define a learned remote transmitter, said

¹ Claims 2, 14, 25, 30, 35, 38, 49, and 61 have been objected to by the Examiner as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base and any intervening claims (Final Rej. 10).

controller also being switchable to a door moving mode for moving the access door based upon receiving a signal from the learned remote transmitter;

said controller cooperating with said at least one indicator for indicating whether a new uniquely coded remote transmitter has been learned based upon said controller being switched to the door moving mode.

13. A remote control system for moving an access door and comprising:

at least one indicator;

at least one uniquely coded remote transmitter;

a controller being switchable to a learning mode for learning a unique code of a remote transmitter to define a learned remote transmitter, said controller also being switchable to a door moving mode for moving the access door based upon receiving a signal from the learned remote transmitter; and

at least one remote switch for causing said controller to cooperate with said at least one indicator for indicating whether a new uniquely coded remote transmitter has been learned.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Liotine

US 4,529,980

July 16, 1985

The Examiner rejected claims 1, 3 to 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 48, 50 to 60, and 62 to 71 under 35 U.S.C. § 102(b) based upon the teachings of Liotine.

In establishing a prima facie case of anticipation under § 102(b) the Examiner relies upon Liotine as teaching the transmitter, controller, and indicator recited in the claims on appeal (Ans. 3-7). The Examiner

determines (Ans. 3-4, 7-10) that Liotine's "flashing ready signal" from LED 92 in transmitter 9, indicating that a programming cycle has been completed, meets the limitations of the claims on appeal. The Examiner also determines (Ans. 4, 10-11) that Liotine's receiver 30, including program mode switch 41 and microcomputer 33, cooperates with the indicator 92 to indicate a new transmitter code has been learned.

FINDINGS OF FACT (FF)

1. As indicated *supra*, Appellant describes and claims a system (Fig. 1) and method (Figs. 2, 3) for moving an access door 12 whereby a user is notified by an indicator 50/52 that a new uniquely coded remote transmitter has been learned (Abs.; Spec. 1:14-16, 2:30 to 6:21). The system also includes a controller 22 and at least one uniquely coded remote transmitter 28 (Abs.; claims 1, 13, 24, 29, and 34; Fig. 1). The system and method may also include indicating whether a new uniquely coded remote transmitter has been learned based upon the controller 22 being switched to the door moving mode (claims 1 and 48; Fig. 2, step 106).
2. Liotine describes a remote control method and system for opening a garage or access door (Figs. 1-4; Abs.; col. 1, ll. 15-30, 60-61). The system includes a transmitter 9 (Figs. 1, 7A, 7B) having a unique code (*see* col. 1, ll. 33-59; col. 3, ll. 20-23), a ready indicator LED 92 (*see* Fig. 7B; col. 6, ll. 40-42), and a receiver and controller 30 having a microprocessor 33 (Figs. 3, 8A, 8B).
3. Liotine describes the system as having a garage door opening mode and a programming mode controlled by, and based upon, the position

- of program mode switch 41 (*see* Figs. 3, 4; col. 2, l. 62 to col. 4, l. 4; col. 4, ll. 40-61). When switch 41 is closed the receiver controller 30/33 generates and learns a new randomly generated code for programming a new uniquely coded remote transmitter 9 (i.e., programming mode) (col. 4, ll. 44-54; Fig. 4). “The receiver [30] continues to transmit the code until the program mode switch 41 is opened after which the receiver monitors the receiver input port from the RF section [32] and antenna [31]” (col. 4, ll. 58-61; Fig. 4). The RF section 32 receives input from the transmitter 9 and in response controls an access or garage door (col. 2, l. 44 to col. 3, l. 6) (i.e., when switch 41 is opened the system goes from programming mode to door opening mode).
4. Liotine also describes that when a new code has been learned in the system a new code is detected by “the transmitter which then produces a flashing ready signal to indicate to the operator that the programming cycle has been completed” (col. 1, ll. 53-55). When the programming signal and new code are detected, the transmitter 9 “outputs a flashing ready signal to indicate that the programming cycle has been completed” (col. 5, ll. 30-34).

ISSUES

Claims 1, 3 to 13, 48, and 50 to 59

With regard to the rejection of independent claims 1 and 48, and claims 3 to 13 and 50 to 59 depending respectively therefrom, Appellant argues, *inter alia* (Br. 9-11), that Liotine fails to teach lighting the LED indicator 92 based on the controller being in the operating mode, and instead

discloses lighting LED 92 based on completion of a programming cycle. Appellant's main contention in this regard is that column 4, lines 58 to 61 of Liotine describes an operating mode based on the position of program mode switch 41 (i.e., whether switch 41 is in program mode or operation mode), and not the end of the programming cycle (Br. 9-10).

Based on Appellant's arguments, the following issue is presented: Has Appellant shown that the Examiner erred in determining that Liotine teaches a controller cooperating with an indicator to indicate whether a new uniquely coded remote transmitter has been learned *based upon the controller being switched to a door moving mode*, as set forth in independent claims 1 and 48?

Claims 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71

With regard to the rejection of independent claims 13, 24, 29, 34, and 60, and claims 16 to 23, 26 to 28, 31 to 33, 36, 37, 39 to 47, and 62 to 71 depending respectively therefrom, Appellant argues, *inter alia* (Br. 11-13) that Liotine fails to teach a controller *in cooperation* with an indicator or that the *transmitter*, and not the receiver, causes the indicator to indicate.

Based on Appellant's arguments, the following issue is presented: Has Appellant shown that the Examiner erred in determining that Liotine teaches a controller in cooperation with an indicator for indicating whether a new uniquely coded remote transmitter has been learned, as set forth in each of claims 13, 24, 29, 34, and 60?

PRINCIPLES OF LAW

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We

determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as they would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Anticipation is established when a single prior art reference discloses, expressly or under the principles of inherency, each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Appellant has the burden, when on appeal to the Board, to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

Claims 1, 3 to 13, 48, and 50 to 59

Independent claims 1 and 48 recite a remote control system and a method, respectively, for moving an access door including a uniquely coded remote transmitter and a controller, the controller being in cooperation with an indicator for “indicating whether a new uniquely coded remote transmitter has been learned *based upon the controller being switched to the door moving mode*” (claims 1 and 48 (emphasis added)).

The Examiner is correct that (i) Liotine's “flashing ready signal” from LED 92 in transmitter 9, indicates that a programming cycle has been completed (Ans. 3-4, 7-10), and (ii) Liotine's receiver 30, including program mode switch 41 and microcomputer 33, cooperates with the indicator 92 to

indicate a new transmitter has been learned (Ans. 4, 10-11). However, Liotine's indication (i.e., flashing ready signal) is based on the position of program mode switch 41 (FF 3), and is not based on the controller being switched to a door moving mode.

We agree with Appellant (*see* Br. 9-11) that Liotine's column 4, lines 58 to 61 do not teach the recited limitation of indicating whether a new transmitter has been learned "based upon the controller being switched to the door moving mode, as recited in independent Claims 1 and 48" (Br. 9). Instead, this passage from Liotine describes making the indication based on the position of program mode switch 41 (FF 3), and not based on any action of controller 30/33.

In view of the foregoing, Appellant has persuasively rebutted the Examiner's prima facie case of anticipation for claims 1 and 48 (*see* Ans. 3, 4, 7-10). It follows that anticipation has not been established by the Examiner because Liotine does not disclose each and every limitation of the claimed invention as set forth in claims 1 and 48. *Atlas Powder Co.*, 190 F.3d at 1347; *Paulsen*, 30 F.3d at 1478-79. The same holds true for claims 3 to 12 and 50 to 59 which depend from claims 1 and 48, respectively.

Claims 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71

We agree with the Examiner's findings of fact and determination that a prima facie case of anticipation has been established with respect to claims 13, 24, 29, 34, and 60 (Ans. 3-4, 10-12), and adopt them as our own, along with some amplification of the Examiner's explanation of the teachings of Liotine (FF 2-4). Based on our findings with regard to Liotine (FF 2-4), and the reasons that follow, we will sustain the anticipation rejection of claims 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71.

As discussed *supra*, the Examiner is correct that Liotine's receiver 30 and controller 33 cooperate with program mode switch 41 and indicator 92 to indicate (i) that a programming cycle has been completed (Ans. 3-4, 7-10), and (ii) a new transmitter has been learned (Ans. 4, 10-11). *See* FF 3, 4. Although Liotine's indication (i.e., flashing ready signal) is based on the position of program mode switch 41 (FF 3), and is not based on the controller being switched to a door moving mode, claims 13, 24, 29, and 34 do not put any limitation on the basis for making the indication (as opposed to claims 1 and 48, discussed *supra*, which recite a specific basis for making the indication). Claim 60 recites that the indication be made "based upon activation of the at least one remote switch," a condition which is met by Liotine's switch 41 (*see* FF 3, 4).

Claim 13 (reciting a controller to "cooperate with" an indicator), and claims 24, 29, and 34 (reciting a controller "cooperating with" an indicator), under the broadest reasonable construction in light of the specification as they would be interpreted by one of ordinary skill in the art, merely require that the controller and the indicator of the remote control system work together to cause the indicator to indicate "whether a new uniquely coded remote transmitter has been learned" (claims 13, 24, 29, and 34). *See Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364. Thus, Appellant's contentions (Br. 11-13) that Liotine's controller does not cooperate with an indicator because the *transmitter* determines the programming mode (as opposed to the receiver), are not persuasive inasmuch as they are not commensurate with the language of the claims.

Claims 13, 24, 29, 34, and 60 merely recite a remote control method and system having an indicator, transmitter, and controller. These claims do

not recite that the indicator or controller be located in a certain place in the system. Thus, claims 13, 24, 29, 34, and 60 broadly encompass a remote control system having a controller and an indicator working in cooperation to make an indication to a user, and do not require that the controller or indicator be located in a specific location or that the determination that a programming mode is present be made by the receiver. Claims 13 and 60 add the limitation of a remote switch, and broadly encompass a remote control method and system in which the remote switch causes the controller and indicator to work in cooperation to make an indication to a user, and do not require a specific type of connection (wired or RF) between the remote switch and the controller or that the remote switch be in a specific location (other than just generally being “remote”).

Appellant’s contentions with respect to claims 13, 24, 29, 34, and 60 (Br. 11-13), that (i) Liotine fails to teach a controller *in cooperation* with an indicator, (ii) and that Liotine’s *transmitter*, and not the receiver, causes the indicator to indicate are unconvincing in light of our findings with regard to Liotine (FF 2-4), and the breadth of these claims as just discussed.

Appellant has not persuasively rebutted the Examiner's prima facie case of anticipation with respect to claims 13, 24, 29, 34, and 60, as set forth in the Examiner’s Answer (*see generally* Ans. 3-4, 10-12). Appellant has not demonstrated that the Examiner erred in determining that the remote control method and system of Liotine teaches all of the limitations of claims 13, 24, 29, 34, and 60, including the controller being *in cooperation with* the indicator to indicate if a new uniquely coded remote transmitter has been learned or programmed as set forth in those claims. For the foregoing

reasons, we will sustain the Examiner's rejection of claims 13, 24, 29, 34, and 60.

Appellant presents (Br. 12-13) only nominal arguments with respect to claims 15 to 23, 26 to 28, 31 to 33, 36, 37, 39 to 47, and 62 to 71, relying on the dependency of these claims on respective independent claims 13, 24, 29, 34, and 60 for patentability. Accordingly, we will sustain the Examiner's rejection of these dependent claims for similar reasons as to claims 13, 24, 29, 34, and 60.

In view of the foregoing, Appellant has not convincingly demonstrated that the Examiner erred in rejecting claims 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71 under 35 U.S.C. § 102(b) as being anticipated by the teachings of Liotine (*Kahn*, 441 F.3d at 985-86), and we will sustain the Examiner's rejection as to these claims.

CONCLUSIONS OF LAW

Appellant has shown that the Examiner erred in determining that Liotine teaches a controller cooperating with an indicator to indicate whether a new uniquely coded remote transmitter has been learned *based upon the controller being switched to a door moving mode*, as set forth in independent claims 1 and 48. Accordingly, the Examiner erred in rejecting claims 1, 3 to 12, 48, and 50 to 59 under 35 U.S.C. § 102(b).

Appellant has not shown that the Examiner erred in determining that Liotine teaches a controller cooperating with an indicator to indicate whether a new uniquely coded remote transmitter has been learned, as set forth in independent claims 13, 24, 29, 34, and 60. Accordingly, the Examiner erred

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in rejecting claims 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71 under 35 U.S.C. § 102(b).

ORDER

The decision of the Examiner rejecting claims 1, 3 to 12, 48, and 50 to 59 is reversed, and the decision of the Examiner rejecting claims 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 47, 60, and 62 to 71 is affirmed. Accordingly, the decision of the Examiner rejecting claims 1, 3 to 13, 15 to 24, 26 to 29, 31 to 34, 36, 37, 39 to 48, 50 to 60, and 62 to 71 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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